IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.24532 of 1997

Dated: 08-03-2007

Between:

Syed Moghammad Iqbal,
s/o late Haji Syed Yakoob Sahib Tawakkali,
aged about 62 years,
r/o 19-1-870/4/A, Bahadurpura,
Hyderabad.

... Petitioner

and

1. The Commissioner for Land Reforms and Urban Land Ceiling, Andhra Pradesh, at Hyderabad and 2 others.

... Respondents

ORDER:

This writ petition is filed seeking *mandamus* declaring the order, dated 22-08-1990 passed in Proc.No.B1/1171/76 by the second respondent and the order dated 27-05-1991 passed in Proc.C.No.UC1/57/90 by the first respondent and the consequential notice, dated 23-06-1997 in Proc.No.CC.No.D/1711/76 by the second respondent, as illegal and arbitrary.

2. Facts, in brief, are: Petitioner is the declarant in

CC.No.B1/1711/76 on the file of the Special Officer & Competent Authority under Urban Land Ceiling, Hyderabad. He is the owner of the residential house bearing

No.19-1-870/4/A, Bahadurpura, Hyderabad and the said premises consists of several buildings in a total area of 2508.39 sq. metres. He has also declared the house situated at Masab Tank in an area of 111.18 sq. metres and also another house at Bahadurpura in an area of 352.84 sq. metres. Petitioner states that he was not having any land in excess of the limit prescribed in the city of Hyderabad under the provisions of Urban Land Ceiling and Regulation Act, 1976 (for short, 'the Act'), but under misconception, in view of the available appurtenant land, he had to file declaration under the provisions of the Act. After CC is numbered before the second respondent, a statement was served to the petitioner in Form No.1 under Section 6(1) of the Act. Thereupon, he has filed detailed objections on 11-04-1984 and also filed a petition on 18-01-1990, but without considering the objections in proper perspective, the second respondent passed the impugned order, dated

22-08-1990 in Proc.No.B1/1711/76 holding that he holds excess land to an extent of 1149.69 sq. metres. Assailing the said order, petitioner filed a statutory appeal provided under Section 33 of the Act, and the appellate authority as per the procgs.C.No.UC1/57/90, dated 27-05-1991 dismissed the appeal. According to the petitioner, he was not aware about the order passed by the appellate authority, until he received a notice, dated

23-06-1997 in Proc. CC No.D/1711/76, purporting to be under Section 10(5) of the Act issued by the second respondent.

3. It is the case of the petitioner that the orders passed by the original authority and the appellate authority are illegal and the second respondent has not considered his objections filed pursuant to the

statement issued in Form No.1. It is stated that the petitioner has also gifted a part of the premises by way of HIBA to his sons, which was also reduced into writing in a Memorandum drafted thereafter. The HIBA was prior to the enforcement of the Act. In spite of the same, entire premises was taken into his account and passed the impugned order. It is also stated that second respondent also did not give due shares to his sons who are majors on the date of enforcement of the provisions of the Act and he also failed to deduct the areas which were gifted to his children prior to enforcement of the Act and passed the impugned order.

4. Heard learned counsel for the parties.

5. The main thrust of the learned counsel for the petitioner is that the original authority as well as the appellate authority without holding any detailed enquiry into the contentions put forth by the petitioner, in a routine and mechanical manner passed the orders impugned. I find force in the said submission.

6. One of the contentions raised by the learned counsel for the petitioner is that the petitioner is having major sons and major sons are entitled to a share and in that context he produced some material to establish that he has major sons. When the petitioner himself is stating that he has major sons and they are entitled to a share, the authorities without holding any enquiry, as to whether the property in question is ancestral or self acquired and whether the children of the petitioner are entitled to any share or not, have arrived at a conclusion that the said property is self acquired.

7. Similarly, the petitioner has taken a plea that there was an oral gift prior to 1976 and in support of his plea he has filed affidavits of the month of July, 1981, February, 1985 and October, 1983. When once it is

pleaded,
of course it is for the petitioner to prove the said oral gift, without affording sufficient opportunity to the petitioner to prove the alleged oral gift, the authorities have arrived at the conclusion that gift executed by the declarant is after commencement of the Act and ruled out the possibility of any gift deed.

8. No doubt, the said affidavits are subsequent to the promulgation of the Act and they cannot be taken into consideration. However, as stated above, when once it is the contention of the petitioner that it is an oral gift and the same was entered into prior to 1976, it is immaterial whether the affidavits are filed subsequent to 1976 or before 1976 and the authorities should have given an opportunity to the petitioner to prove the said oral gift. Without going into the said aspect, the authorities have concluded that the said oral gift cannot be accepted. Similarly there is a dispute about the plinth area of the house situated at Bahadurpura, for which also the authorities in haste have come to the conclusion that no documentary evidence is produced without proper personal verification. Accordingly, this Court is of the view that the said orders passed by the authorities are liable to be set aside.

9. In the result, the writ petition is allowed setting aside the order, dated 22-08-1990 passed in Proc.No.B1/1171/76 by the second respondent and
the order dated 27-05-1991 passed in Proc.C.No.UC1/57/90 by the first respondent as well as the consequential notice, dated 23-06-1997 issued in Proc.No.CC.No.D/1711/76 by the second respondent. Consequently,
the matter is remanded to the second respondent i.e. the Special Officer & Competent Authority, Urban Land Ceiling, Hyderabad to hold an enquiry in detail and arrive at a conclusion as to whether there is any

excess holding or not. It is needles to say that the petitioner may produce all evidence before the said authority. No costs.

JUSTICE GOPALAKRISHNA TAMADA

Dt.08-03-2007
GLV